

Television Signal Corporation, d/b/a Viacom Cablevision of San Francisco and Communications Workers of America, AFL-CIO, Petitioner.
Case 20-RC-15580

25 January 1984

DECISION AND DIRECTION

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

The National Labor Relations Board, by a three-member panel, has considered the determinative challenge in an election held 21 January 1983 and the Hearing Officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement.¹ The tally of ballots shows seven for and six against the Petitioner, with one challenged ballot.

The Board has reviewed the record and Hearing Officer's report in light of the exceptions and brief, and hereby adopts the Hearing Officer's findings only to the extent consistent herewith.

The issue in this case is whether or not employee Anthony Hatch, the challenged voter, should be included in a unit of sales representatives at Viacom's San Francisco facility. At the outset, we must consider the language of the stipulation excluding "employees covered by an existing collective-bargaining agreement" The parties further stipulated that the period for eligibility should be the payroll period ending 21 December 1982. The record indicates that Hatch was a member of the International Brotherhood of Teamsters, Local 856, until December 1982.² On 6 December 1982, Hatch transferred from his position at Viacom as a commercial marketing representative³ to become a commercial sales representative. In this new position, Hatch acquired the added responsibility for actively soliciting multiple dwelling agreements permitting Viacom to wire commercial dwellings for cable television service. According to uncontroverted hearing testimony, in December 1982 Hatch submitted a withdrawal card to Local 856. In a conversation with a Viacom manager, the business representative for Local 856 gave assurances that the with-

drawal card would be approved and issued. Furthermore, Local 856 did not object to Viacom's deletion of Hatch from the Union's health and welfare trust fund payment list. Based on the changed nature of Hatch's job, and on the evidence that Hatch withdrew from Local 856 prior to the period for eligibility, we find that Hatch was not covered by the existing collective-bargaining agreement as of 21 December 1982. Accordingly, he is not excluded from the unit of sales representatives on that ground.

The Employer's primary exception in this case is to the Hearing Officer's failure to conclude that Hatch is a sales representative within the meaning of the stipulated election agreement despite his finding that Hatch was classified as a commercial sales representative during the eligibility period. We agree with the Employer's contention and hold that the Hearing Officer erred in applying the community of interest doctrine to the facts of this case.

It is well-settled law in stipulated unit election cases that "the Board's function is to ascertain the parties' intent with regard to the disputed employee and then to determine whether such intent is inconsistent with any statutory provision or established Board policy."⁴ The Board examines the intent on an objective basis, and denies recognition to any subjective intent at odds with the stipulation.⁵ When the objective intent is clear, the Board will hold the parties to their agreement.⁶ If, however, the objective intent is ambiguous, the Board resorts to the community of interest doctrine to aid its resolution of the challenged voter's unit inclusion.⁷ In order to determine whether a stipulation's intent is ambiguous or clear, the Board will compare the express descriptive language of the stipulation with the bona fide⁸ titles or job descriptions of the affected employee. If the employee's title fits the descriptive language, the Board will find a clear expression of intent and include the employee in the unit. If the employee's title does not fit the descriptive language, it will also find a clear expression of intent and exclude the employee from the unit. The Board bases this approach on the expectation that the parties are knowledgeable as to the employees' job titles, and intend their descriptions in the stipulation to apply to those job titles. Finally, if the affected employees lack job titles or descriptions, the Board will find an ambiguous ex-

¹ The parties stipulated that the appropriate unit should be: "All sales representatives employed by the Employer at its San Francisco, California facility; excluding all other employees, employees covered by existing collective-bargaining agreements, office clerical employees, guards and supervisors as defined by the Act."

² The recognition clause for the relevant Teamsters collective-bargaining agreement covered "office clerical and engineering personnel at the Employer's San Francisco location, excluding confidential and exempt employees, salespeople, employees covered by other contracts, guards and supervisors."

³ As a commercial marketing representative, Hatch received customer inquiries, scheduled engineer survey appointments, mailed multiple dwelling agreements to customers for approval, and scheduled crews for wiring commercial dwellings to receive Viacom's cable services.

⁴ *Tribune Co.*, 190 NLRB 398, 399 (1971).

⁵ *White Cloud Products*, 214 NLRB 516, 517 (1974).

⁶ *Prudential Insurance Co.*, 246 NLRB 547, 548 (1979).

⁷ See, e.g., *Detective Intelligence Service*, 177 NLRB 69 (1969), *enfd.* 448 F.2d 1022 (9th Cir. 1971).

⁸ We will only consider bona fide titles or job descriptions that fairly represent the employee's function and have been applied for a reasonable period of time.

pression of intent and directly apply the community of interest doctrine to the facts of the case.

The express descriptive language of the stipulation in this case included all sales representatives in the unit. We find, in agreement with the Hearing Officer, that as of 6 December 1982, Hatch's job description was changed to "Commercial Sales Representative." In light of the evidence that Viacom employed commercial sales representatives at five other locations in the United States, that Viacom considered creating a commercial sales representative position in San Francisco well in advance of the election campaign, and that the job title fairly represents Hatch's function, we find that the job title is bona fide as applied to Hatch. In this case, Hatch's job title fits the descriptive language of the stipulation. The stipulation includes all sales

representatives, and Hatch was a commercial sales representative. Accordingly, we find a clear expression of intent, conclude that Hatch is a sales representative within the meaning of the stipulated election agreement, and include Hatch in the unit. The challenge to his ballot is hereby overruled.

DIRECTION

It is directed that this case be remanded to the Regional Director for Region 20. Within 10 days from the date of this Decision and Direction, the Regional Director shall open and count the ballot of Anthony Hatch and shall thereafter prepare and serve on the parties a revised tally of ballots, upon which basis he shall issue the appropriate certification.